

GAHC010141512025



2025:GAU-AS:13252-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3682/2025

ISHA BEWA ALIAS AYESHA BEWA ALIAS AYESHA
W/O- DANSH ALI, R/O- VILL.- KAMARPARA, P.O. AND P.S. KHARUPETIA,
DIST. DARRANG, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF INDIA, HOME AFFAIRS DEPARTMENT, NEW DELHI-01.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DSIPUR
GUWAHATI-06.

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI-01.

4:THE STATE CO-ORDINATOR
NRC
ASSAM

5:THE DISTRICT COMMISSIONER
DARRANG
MONGALDAI
DIST. DARRANG
ASSAM
PIN- 784115.

6:THE SUPERINTENDENT OF POLICE (B)

DARRANG
DIST. DARRANG
ASSAM
PIN- 784115

Advocate for the Petitioner : MR A ALI, MS. M KHATUN,MS K TAYE

Advocate for the Respondent : DY.S.G.I., SC, ECI,GA, ASSAM,SC, NRC,SC, F.T

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 22.09.2025
(K.R. Surana, J)

Heard Mr. A. Ali, learned counsel for the petitioner. Also heard Ms. B. Sarma, learned CGC; Mr. G. Sarma, learned standing counsel for the FT matters and NRC; Mr. M. Islam, learned counsel appearing on behalf of Mr. A.I. Ali, learned standing counsel for the ECI; and Mr. P. Sarmah, learned Additional Senior Govt. Advocate for the State respondent.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Isha Bewa @ Ayesha Bewa @ Ayesha, has assailed the *ex parte* opinion dated 10.03.2021, passed by the learned Member, Foreigners Tribunal (3rd), Darrang, Mangaldai, in F.T. Case No. 2914/2012 [arising out of Ref. IM(D)T C/N. 926/2002], by which the petitioner was held to be a foreigner of post 25.03.1971 stream.

3) Pursuant to the order dated 26.06.2025, the Tribunal's record has been received. Having heard both sides, the materials available on record has been perused.

4) The learned counsel for the petitioner has submitted that the petitioner is a 74 year old lady and due to ignorance of law and the consequences of the impugned opinion rendered by the learned Foreigners Tribunal, she had inadvertently failed to appear and contest the proceeding. It was submitted that as the citizenship right of the petitioner is involved, one opportunity may be granted to the petitioner to contest the proceeding.

5) The said prayer is opposed by the learned standing counsel for the FT and Border matters.

6) On a perusal of the record, it is seen that in the impugned opinion, the learned Tribunal has recorded in paragraph 2 and 3 of the impugned order to the effect that on 17.08.2020, notice issued to the petitioner was returned with report that the petitioner was not available in the address as mentioned in the reference and so notice was served by hanging in a conspicuous place and thus, notice was deemed to be duly served as per Order 3(5)(f) of the Foreigners (Tribunals) Order, 1964.

7) However, on a perusal of the process servers report, available in the record, it is seen that the Superintendent of Police (Border), Darrang had deputed two police personnel to serve the process to the petitioner. As per the said process server's report, they had gone to the given address and met the petitioner while serving the notice to the petitioner, had also explained the contents to her and the petitioner's thumb impression was obtained on the first copy of the notice, which was returned back to the learned Tribunal. The process was thereafter, returned to the learned Tribunal by the Superintendent of Police (Border), Darrang, Mangaldai.

8) Thus, it appears that the learned Member, Foreigners Tribunal

(3rd), Darrang, Mangaldai, had not even taken due care to read over the returned notice in F.T. Case No. 2914/2012, and in a most perverse manner, made an incorrect observation in paragraph 2 and 3 of the impugned opinion. However, the said error is not found to have caused any prejudice to the petitioner because despite due service of notice, she did not appear before the learned Tribunal to contest the proceeding.

9) Therefore, the materials available on record discloses that on 24.06.2020, notice of the proceeding was duly served on the petitioner. However, though as per order dated 17.08.2020, the learned Tribunal had recorded that notice upon the petitioner was duly served, the proceeding was adjourned on 17.08.2020, 21.09.2020, 10.11.2020, 18.12.2020, 07.01.2021 and 03.02.2021. By order dated 03.02.2021, the learned Tribunal had recorded that the matter would be decided *ex parte* on 10.03.2021. Accordingly, an *ex parte* opinion was rendered on 10.03.2021.

10) This writ petition has been filed on 24.06.2025. Hence, as the petitioner has assailed the impugned *ex parte* opinion after an inordinate delay of 4 years, 2 months, 14 days, both sides were heard on the issue of delay and laches.

11) It may be mentioned that along with this writ petition, the petitioner has disclosed in her family tree that Gorisum is the name of her grandfather; Sarifuddin is the name of her father. In this writ petition, the petitioner has annexed 11 documents, viz., photocopy of voter list of 1966 of father of the petitioner (Annexure-A); photocopy of voter list of 1966 of husband of the petitioner (Annexure-B); photocopy of voter list of 1971 (Annexure-C); photocopy of NRC (Annexure-D); photocopy of voter list of 1989

(Annexure-E); photocopy of voter list of 1993 (Annexure-F); photocopy of voter list of 1997 (Annexure-G); photocopy of Elector Voter Identity Card (Annexure-H); photocopy of AADHAAR Card (Annexure-I); photocopy of PAN Card (Annexure-J); photocopy of the impugned *ex parte* opinion dated 10.03.2021 (Annexure-K). Except the sole entry of name of projected father of the petitioner, namely, Sarifuddin, son of Gorisum of Village- ChakraGaon under No. 73 Dalgaon LAC in the electoral roll of 1966 (Annexure-A), there is no other document containing the said name.

12) The Court in exercise of certiorari jurisdiction, cannot examine any record that was not produced before the learned Tribunal, yet the Court has examined the documents annexed to the writ petition to see if the petitioner has annexed any documents along with the writ petition which could *prima facie* show if the petitioner has sufficient documents to show that she was a *bona fide* citizen of India. However, a stand-alone electoral roll of 1966 (Annexure-A), is not sufficient to establish the link of the petitioner with her projected father. Moreover, as stated hereinbefore, the petitioner has not divulged any particulars of her projected parents and grandparents, siblings of her parents, or where they were born and brought-up.

13) It may be stated that on a perusal of the Tribunal's record, it is seen that pursuant to the directions issued by the Superintendent of Police (Border), Darrang, Mangaldai vide communication dated 25.09.2002, the investigation against the petitioner was carried out by the concerned Border police personnel on 04.06.2002. Thereafter, the Superintendent of Police (Border), Darrang made a reference before the erstwhile Illegal Migrants (Determination) Tribunal, under the erstwhile Illegal Migrants (Determination by Tribunals) Act, 1983, which was based on the report of the Electoral Registration

Officer. The Proceeding was registered before the erstwhile jurisdictional Illegal Migrants (Determination) Tribunal as IM(D)T Case No. 926/2002.

14) It may also be stated that pursuant to the declaration of the erstwhile Illegal Migrants (Determination by Tribunals) Act, 1983 as *ultra vires* by the Supreme Court of India in the case of *Sarbananda Sonowal v. Union of India & Ors.*, (1995) 5 SCC 665, the reference pending before the erstwhile Illegal Migrants (Determination) Tribunals were transferred to the jurisdictional Foreigners Tribunals.

15) Be that as it may, in paragraph 6 of this writ petition, the petitioner has stated that she was informed about the *ex parte* opinion by a learned counsel and at her request, the said learned counsel obtained and gave her the certified copy of the said *ex parte* opinion. It has been stated that the petitioner was under an impression that nothing was required to be done in respect of the impugned opinion. However, when the police visited her place, she had filed the writ petition.

16) Thus, despite being conscious and aware of the passing of the impugned *ex parte* opinion dated 10.03.2021 on 01.04.2022, when the certified copy of the said opinion was issued, the petitioner did not show any urgency to challenge the impugned *ex parte* opinion dated 10.03.2021 within a reasonable time.

17) It may be relevant to refer to the decision of this Court in the case of *Jonali Das v. Union of India*, 2018 (5) GLT 492: (2018) 0 Supreme (Gau) 1186. Paragraph 9 thereof is as follows:-

9. In *Azmat Ali @ Amzad Ali Vs. Union of India* [WP(C) No.4971/2018] disposed of on 01.08.2018, this Court had observed as follows:-

"It is more than three decades that the issue of influx of foreign nationals has

been in public domain in the State of Assam and has engaged the attention of the people. Interest of the State is of paramount importance in that unabated influx has the potential to affect the integrity and sovereignty of the country. Citizenship of a person, no doubt, is a very valuable right and should be zealously guarded. There is no gainsaying the fact that a person who is alleged to be a foreigner must be given due and reasonable opportunity to establish that he is a citizen of India. However, if a person does not take steps for safeguarding his interest, he does so at his own risk and peril as grant of opportunity cannot be an endless exercise. Right to a fair hearing or principles of natural justice cannot be permitted to lead to a farcical situation and to be an engine for defeating the very object of identification and deportation of foreigners."

18) It would also be relevant to refer to the observations made by the Full Bench of this Court in paragraph 92 of the case of *State of Assam v. Moslem Mondal, 2013 (1) GLT 809*, which is quoted below:-

"92. The Apex Court in Grindlays Bank Ltd.(supra) while dealing with the power of the Labour Court, constituted under the Industrial Disputes Act, to entertain an application to set aside its ex-parte award, has held that there being no statutory prohibition to entertain such an application, the Tribunal has the power to entertain the same in the interest of justice. It has also been held that though there is no express provision in the Industrial Disputes Act or the Rules framed thereunder giving the Tribunal jurisdiction to entertain such application, the Tribunal should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. It has also been held that the power given to the Tribunal under Section 11(1) of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 to follow such procedure as the Arbitrator or other authority concerned may think fit, are of widest amplitude and confer ample power upon the Tribunal and other authorities to devise its procedure as the justice of the case demands. The Apex Court further opined that the object of giving such wide power being to mitigate the rigour of the technicalities of the law for achieving the object of effective investigation and settlement of the disputes, the Tribunal can entertain an application for setting aside an ex-parte award. The Tribunal, however, is required to exercise its discretion relating to the entertainment of such application, in a judicial manner, without caprice and according to the general principle of law and rules of natural justice. The same view has also been reiterated by the Apex Court in Satnam Verma (supra)."

19) In view of the discussions above, the Court is of the considered opinion that due to willful and deliberate abstinence on part of the petitioner to challenge the impugned *ex parte* opinion within a reasonable time, the petitioner has not been able to make out any case for any interference whatsoever in respect of the *ex parte* opinion impugned herein.

20) The petitioner has stated in paragraph 6 of the writ petition that she was handed over the certified copy of the impugned *ex parte* opinion dated 10.03.2021 in the year 2022. Therefore, she must have got it sometime after the certified copy of the opinion was prepared on 01.04.2022. Therefore, if a belated challenge is now accepted after a lapse of 4 years, 2 months, 14 days, it would amount to giving premium to the petitioner for not contesting the proceeding before the learned Foreigners Tribunal, and for not assailing the opinion at the earliest, on receipt of the certified copy.

21) The petitioner has miserably failed to demonstrate that the impugned *ex parte* opinion is vitiated by any reason whatsoever.

22) In exercise of certiorari jurisdiction under Article 226 of the Constitution of India the High Court ought not to substitute its view over opinion of the learned Foreigners Tribunal, which is not found to be vitiated for any error whatsoever.

23) Resultantly, this writ petition fails and the same is dismissed. The *ex parte* opinion dated 10.03.2021, passed by the learned Member, Foreigners Tribunal (3rd), Darrang, Mangaldai, in F.T. Case No. 2914/2012 [arising out of Ref. IM(D)T C/N. 926/2002], by which the petitioner was held to be a foreigner of post 25.03.1971 stream, does not call for any interference

24) However, there shall be no order as to cost.

25) The Registry shall return back the records of the learned Tribunal along with a copy of this to be made a part of the record for future reference.

JUDGE

JUDGE

Comparing Assistant